

CHAPTER 24

Proprietary Schools

33--2401. Definitions. -- For the purposes of chapter 24, title 33, Idaho Code, the following words have the following meanings:

- (1) "Accredited" means that a school has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board or the United States department of education.
- (2) "Agent" means any individual who solicits students for courses in Idaho.
- (3) "Agent's permit" means a nontransferable written document issued to an agent by the board.
- (4) "Board" means the state board of education.
- (5) "Course of study" means either a single course or a set of related courses for which a student enrolls.
- (6) "Degree" means any academic, vocational or honorary title or designation, mark, appellation, series of letters, numbers or words such as but not limited to, "bachelor's," "master's," "doctorate," or "fellow," which signifies, purports, or is generally taken to signify satisfactory completion of the requirement of an academic, vocational, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition of an associate of arts or associate of science degree awarded by a community college or other institution which may be used for any purpose whatsoever.
- (7) "Person" means any individual or other legal entity conducting courses.
- (8) "Principal" means any person conducting courses.
- (9) "Program" is defined as a series of courses leading to the awarding of a certificate or degree.
- (10) "Proprietary school" referred to as "school" means any postsecondary or vocational educational school operated for a profit, or on a nonprofit basis, which maintains a place of business within the state of Idaho or solicits business within the state of Idaho offering degrees, career or job training programs and which is not specifically exempted by the provisions of this chapter.
- (11) "Registrant" means a person or principal who has been issued a certificate authorizing the conduct of courses.
- (12) "Student" means an Idaho resident enrolled in a proprietary school. [I.C., § 33-2401, as added by 1993, chapter 57, § 3, p. 154.]

33-2402. Schools and courses exempted. -- The following schools or courses are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school":

- (1) A school, educational institution or agency supported primarily by taxation from either a state or local source.
- (2) Courses offering instruction or training solely avocational or recreational in nature, as determined by the board.
- (3) Courses recognized by the board, which comply in whole or in part with the compulsory education law.
- (4) Courses offered by an educational institution accredited by a national or regional accrediting agency recognized by the board or the United States Department of Education.
- (5) A course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student.
- (6) A school or course, which is otherwise regulated, licensed or registered with another state agency pursuant to title 54, Idaho Code.
- (7) Aviation school or instructors approved by and under the supervision of the federal aviation administration.
- (8) Intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests.
- (9) Entities not otherwise exempt, offering only workshops or seminars lasting no longer than three (3) calendar days.
- (10) Courses offered by a parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. [I.C., § 33-2402, as added by 1993, chapter 57, § 3, p. 154.]

33-2403. Federal requirements -- State postsecondary review. -- To protect the interest of students and the federal accounts that support them, the board shall be designated as the state postsecondary review entity. The board shall develop rules, which provide for standards and shall conduct or coordinate reviews of proprietary schools that enroll students participating in title IV of the higher education act of 1965 and its amendments. [I.C., § 33-2403, as added by 1993, chapter 57, § 3, p. 154.]

33-2404. Registration. -- No person or principal, whether operating from within or without the state of Idaho, shall sell, offer for sale, or distribute, or cause to be sold, offered for sale, or distributed, any course or courses in this state unless such person shall be registered with, and hold a valid certificate of registration issued by the board. Any such registration and certificate of registration shall expire on the thirtieth day of June of each year. [I.C., § 33-2404, as added by 1993, chapter 57, § 3, p. 154.]

33-2405. Agent's permit. -- No individual may act as an agent unless that individual holds a valid permit issued by the board and maintains at all times a surety bond as described in section 33-2407, Idaho Code.

The application for a permit shall be furnished by the board and shall include the following:

- (1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules promulgated pursuant thereto.
- (2) An annual fee of twenty-five dollars (\$25.00) for each permit.

All permits shall be renewed annually upon reapplication and proper qualifications on the first day of July. If courses are solicited or sold by more than one (1) agent, a separate permit is required for each agent.

The permit shall consist of a pocket card and shall bear the name and address of the agent, the name and address of the principal, and the statement that the bearer is an authorized agent of the principal, and may solicit and sell courses for the principal. The agent shall surrender the permit to the principal upon termination of employment.

An agent representing more than one (1) institution shall obtain a separate agent's permit for each institution represented.

No individual shall be issued a permit if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter.

A permit shall be valid for the state's fiscal year in which it is issued, unless sooner revoked or suspended by the board for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, or for the existence of any condition in respect to the agent or the school he or she represents, which if in existence at the time the permit was issued, would have been grounds for denial for the permit.

The agent shall carry the permit with him or her for identification purposes when engaged in the solicitation for the sale and the selling of courses of study away from the premises of the school, and shall produce the permit for inspection upon request.

The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any denial of a permit or proceeding to revoke or suspend a permit of the board conducted pursuant to this section.

The issuance of a permit pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any permit to expressly or impliedly represent by any means whatever, that the board has made any evaluation, recognition, accreditation or endorsement of any course of study being offered for sale by the agent or school. Any oral or written statement, advertisement or solicitation by any principal or agent, which refers to the board shall state:

"(Name of School) is registered with the State Board of Education in accordance with Section 33-2404, Idaho Code."

It shall be unlawful for any agent holding a permit under the provisions of this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the permit constitutes an assurance by the board that any course of study being offered for sale by the individual or school will provide and require of the student a course of education or training necessary to reach a professional, education, or vocational objective, or will result in employment or personal earning for the student, or that the board has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or school.

No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or unfair.

The board shall maintain records for five (5) years of each application for permit, each bond, and each issuance, denial, termination, suspension and revocation of a permit.

The board or a student may bring an action pursuant to the Idaho rules of civil procedure for an agent's violation of the provisions of this chapter or any rule promulgated pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which party is the "prevailing party" and the prevailing party shall be entitled to the recovery of damages, reasonable attorney fees and costs both at trial and on appeal.

Additionally, any principal or agent who violates the provisions of this section is also guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five thousand dollars (\$5,000), or both. [I.C., § 33-2405, as added by 1993, chapter 57, p. 154.]

- (3) The State Board of Education through its Academic Affairs and Program Committee, has set the following fee schedule for non-accredited institutions:
- (a) Registration fee of one hundred dollars (\$100.00) per institution per year.
 - (b) Processing fee of one hundred dollars (\$100.00) per course request.

33-2406. Purchase statement. -- At the time of depositing any moneys to purchase the product of any proprietary school, the school shall require the student to execute the following statement on an appropriate form, which shall be maintained on record by the proprietary school in the individual student's file:

"I understand that (Name of Institution) is registered with the State Board of Education in accordance with Section 33-2404, Idaho Code. I also understand that the State Board of Education has not accredited or endorsed any course of study being offered by (Name of Institution)." [I.C., § 33-2406, as added by 1993, chapter 57, § 3, p. 154.]

33-2407. Surety Bond. -- A surety bond issued by an insurer duly authorized to do business in this state in favor of the state of Idaho for the indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter shall be required of an agent. The term of the bond shall extend over the period of the permit. The school shall supply the bond.

The bond shall provide for liability in the penal sum of one hundred thousand dollars (\$100,000) for those schools with one hundred (100) or more students; fifty thousand dollars (\$50,000) for those schools with

fifty (50) to ninety-nine (99) students; twenty-five thousand dollars (\$25,000) for those schools with less

than fifty (50) students. Notwithstanding the above, for those schools that can demonstrate through an Idaho licensed CPA audit that the institution's total annual tuition received from any source is less than ten thousand dollars (\$10,000) per year may provide a performance/surety bond of ten thousand dollars (\$10,000) per year.

The board may submit a demand upon the surety on the bond on behalf of a student or students when it is reasonably believed that a loss has occurred due to fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as [a] result of any violation of the provisions of this chapter or the rules promulgated pursuant to this chapter.

Neither the principal nor surety on the bond may terminate the coverage of the bond, except upon giving one hundred twenty (120) days' prior written notice to the board, and contemporaneously surrendering all agents' permits.

Each school shall certify, at the time of registration, the number of students presently enrolled at the school and shall make available, upon request of the board, proof of enrollment numbers. [I.C., § 33-2407, as added by 1993, chapter 57, § 3, p. 154.]

33-2408. Student tuition recovery account - Conditions for recovery.

- (1) There is hereby created in the state treasury the student tuition recovery account to be administered by the board for the purpose of relieving or mitigating pecuniary losses suffered by an Idaho resident who is a student of a school registered under the provisions of this chapter and who meets either of the following conditions:
 - (a) The student was enrolled in a school prior to the school's closure, had prepaid tuition, and suffered loss as a result of:
 - (i) The closure of the school; or
 - (ii) The school's breach or anticipatory breach of the agreement for the course of study.

For the purpose of this section, "closure" includes closure of a branch or satellite campus, the termination of either the correspondence or residence portion of a home study or correspondence course, and the termination of a course of study for some or all of the students enrolled in the course before the time the students have satisfactorily completed the program, or before a student who has been continuously enrolled in a course of study had been permitted to complete all the educational services and classes that comprise the course.
 - (b) The student obtained a judgment against the institution for any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, and the student certifies that the judgment cannot be collected after diligent collection efforts.
- (2) Payments from the account to any student shall be subject to rules and conditions, as the board shall prescribe.
 - (a) The school shall provide to the board at the time of the school's closure the names and addresses of persons who were students of the school within sixty (60) days prior to its closure, and shall notify these students within thirty (30) days prior to the school's closure, of their rights under the student tuition recovery account and how to apply for payment.

- (b) If the school fails to comply with the provisions of this section, the board shall attempt to obtain the names and addresses of these students and shall notify them, within ninety (90) days of the school's closure, of their rights under the student tuition recovery account and how to apply for payment. The board may require the school to reimburse the board for all reasonable costs and expenses incurred in notifying students.
 - (c) The board shall develop a form fully explaining a student's rights, which shall be used by the school or the board to comply with the notice requirement. The form shall include or be accompanied by a claim application form and an explanation of how to complete the application.
 - (d) Students filing for payment from the student tuition account as a result of the closure of a school must submit the claim within one (1) year from the school's or board's service of notice on the student or within two (2) years of the closure of the school, whichever is earlier.
- (3) Students entitled to payment shall file with the state board of education a verified application including, but not limited to each of the following:
- (a) The student's name, address, telephone number and social security number.
 - (b) If any portion of the tuition was paid from the proceeds of a loan, the name of the lender and any state or federal agency that guaranteed the loan.
 - (c) The amount of the prepaid tuition.
 - (d) The dates the student started and ceased attending the school.
 - (e) A description of the reasons the student ceased attending the school.
 - (f) If the student ceased attending because of a breach or anticipatory breach, a statement describing in detail the nature of the economic loss incurred.
- (4) Students entitled to payment based on a judgment shall file with the board a verified application indicating the student's name, address, telephone number and social security number, the amount of the judgment obtained against the school, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. A certified copy of the judgment and any other documents, indicating the student's efforts made to enforce the judgment, shall accompany the application. The application shall be filed with the board within two (2) years after the date upon which the judgment became final.
- (5) If the board pays the claim, the amount of the payment shall be the total amount of the student's economic loss, although the amount of the payment shall in no event exceed the amount of the student's tuition and cost of equipment and materials related to the course of study plus interest on all student loans used to pay tuition, equipment and materials. Upon payment of the claim, the board shall be subrogated to all of the student's rights against the school to the extent of the amount of the payment. If the board receives several claims from students, the payment of which cannot be totally covered by the student tuition recovery account, the claims shall receive a prorata [pro rata] share of the account.

- (6) If the board denies a claim, the board shall notify the student of the denial and of the student's right to request a hearing within thirty (30) days. The hearing shall be held pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code. If a hearing is not requested the board's decision shall be final.
- (7) It is the intent of the legislature that, when a student is enrolled in a school that closes prior to the completion of the student's program, the student shall have the option for a teach-out at another school with a comparable course of study. The board shall seek to promote teach-out opportunities whenever possible, with the student to be informed by the board that he or she has the option of either payment from the account or a teach-out which shall be funded from the account.
- (8) No liability accrues to the state of Idaho from claims made against the student tuition recovery account. [I.C., § 33-2408, as added by 1993, chapter 57, § 3, p. 154.]

33-2409. Assessment for student tuition recovery account. -- The board shall assess each registered school which collects any moneys in advance of rendering services, an amount equal to one-tenth of one percent (.1%) of the total course cost for each student enrolled. The assessment per student shall not be less than one dollar (\$1.00), and not more than four dollars (\$4.00). In addition, for each student who prepays an institution an amount in excess of four thousand dollars (\$4,000), the board shall assess the school one-half of one percent (.5%) of the prepaid amount which exceeds four thousand dollars (\$4,000). The board shall promulgate rules regarding collection and administration of the student tuition account.

At any time that the balance is in excess of fifty thousand dollars (\$50,000), the board shall suspend collection, except as provided in the event of a newly registered school or the transfer of ownership of a school as provided in this section, until such time as the balance is again below fifty thousand dollars (\$50,000).

Newly registered schools shall, regardless of the balance in the account, contribute the assessment set forth in this section for two (2) years.

If fifty-one percent (51%) or more of the ownership interest in a school is conveyed through sale or other means into different ownership, the new owner shall commence contributions under the provisions applying to a new applicant.

No more than ten percent (10%) per fiscal year shall be used for the administration of the tuition recovery program. The interest earned on money in the account shall be credited to the account.

In the event of a closure of a school registered under the provisions of this chapter, any assessments which have been made against those schools, but have not been paid into the account, shall be recovered to the extent feasible, or any payments from the student tuition recovery account made to students on behalf of any school may be recovered from that school by appropriate action taken by the board. The moneys so deposited in the student tuition recovery account shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those schools or students. [I.C., § 33-2409, as added by 1993, chapter 57, § 3, p. 154.]

33-2410 - 33-2412. Violation a misdemeanor -- Rules and regulations -- Judicial review.
[Repealed.]